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16th September 2021

Subject: Appeal FAC 762/2020 regarding licence CN84735

Dear [Redacted]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN84735 for the afforestation of 10.59 ha of land at Lakill and Moortown, Co Westmeath was approved by the Department of Agriculture, Food and the Marine (DAFM) on 14th September 2020.

Hearing

An oral hearing of appeal FAC 762/2020 was held by the FAC on 3rd June 2021, of which all parties were notified, and representatives of the DAFM attended.

In attendance at Oral Hearing:

FAC Members:	Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr Derek Daly & Mr Seamus Neely.
Department Representative(s):	Ms. Mary Coogan, Mr. Rory Greene,
Appellant:	[Redacted]
Applicant / Representative(s):	[Redacted]
Secretary to the FAC:	Mr. Michael Ryan.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and in particular the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN84735.

The licence relates to the afforestation of 10.59 ha at Lakill and Moortown, Co Westmeath. The soil type underlying the project area is described in the DAFM Appropriate Assessment (AA) screening documentation as being predominantly podzolic in nature, the slope is described as being predominantly steep (15% to 30%), the project area is said to be crossed by / adjoins an aquatic zone(s), the vegetation type(s) within the project area is said to comprise grasslands of unknown type, hedgerows, treelines and having unknown hydrology. It was stated as not having been field inspected at initial screening due to covid 19 implications.

The DAFM undertook a screening for AA of the proposal that identified fifteen European sites (Derragh Bog SAC 002201, Garriskil Bog SAC 000679, Garriskil Bog SPA 004102, Lough Bane And Lough Glass SAC 002120, Lough Derravaragh SPA 004043, Lough Kinale and Derragh Lough SPA 004061, Lough Lene SAC 002121, Lough Owel SAC 000688, Lough Owel SPA 004047, Lough Sheelin SPA 004065, Moneybeg And Clareisland Bogs SAC 002340, River Boyne And River Blackwater SAC 002299, River Boyne and River Blackwater SPA 004232, Scragh Bog SAC 000692, and White Lough, Ben Loughs And Lough Doo SAC 001810) within 15 km of the project. Each site is considered in turn together with their qualifying Interests and conservation objectives and five sites were screened in as per the initial screening exercise carried out by the inspector. The five sites screened in were Lough Bane And Lough Glass SAC 002120, Lough Lene SAC 002121, River Boyne And River Blackwater SAC 002299, Scragh Bog SAC 000692 and White Lough, Ben Loughs And Lough Doo SAC 001810. The DAFM carried out a review of the initial screening (as referenced above which screened in five European sites) as set out in the report dated 14th July 2020 and titled '*Appropriate Assessment Screening Determination for afforestation project CN84735, located at Lakill and Moortown Co Westmeath*'. The outcome of this review was to reverse the screening findings for the five initially screened in sites resulting in all fifteen European sites examined being screened out. The rationale for the reversal of the screening conclusions in this case was based on a confirmation from the applicant's forester that there was no hydrological connectivity from the project area to European sites. The DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. A submission was received on 15th September 2019 from a member of the public. The application was referred to the Westmeath County Council and no response to the referral is to be found on file. The application was also referred to An Taisce who pointed out in its response that the project lies near the Lough Lene SAC and indicated that its main concerns were that an AA was required for the said SAC and that there was insufficient ABE area. The application was also referred to the National Parks and Wildlife Service who replied indicating that the Department of Culture, Heritage and the Gaeltacht had no comments to make on the case while enclosing an Appendix of a general nature. The licence was approved with conditions on 14th September 2020.

The Appeal

There is one appeal against the decision. The grounds, in summary contend that the In-Combination Statement shows forestry since 2016 as exceeding 50 ha, that felling in the area exceeds 50 ha, that An EIA is required, and that the site is within 5 km of White Lough, Ben Loughs and Lough Doo SAC and Lough Lene SAC and that no Appropriate Assessment (AA) screening has taken place.

DAFM Statement to the FAC

In a statement to the FAC, the DAFM confirmed the timeline of the application and stated that the application was both desk and field assessed (03/09/2020). It also states that the decision was issued in accordance with the procedures, S.I. 191/2017 and the 2014 Forestry Act. The statement confirms that the AA procedure used was *version 05Nov19* and sets out the sequence of interactions with the file by the Inspector. In relation to EIA screening the statement sets out that the area of this application together with existing afforestation of three years or less within a 500-metre radius was 17.63 ha. The statement references the In-Combination report for the proposal which is to be found on file. The SOF sets out that the In-Combination report was reviewed and that it was observed that there are afforestation files listed in same that were not approved or recommended for approval at the time of the (EIA screening) assessment and that there are private felling licences which were similarly not recommended for approval at the time of the (EIA screening) assessment.

The Oral Hearing

At the oral hearing of the appeal the DAFM representatives outlined the processing of the application and the associated timelines / dates. The DAFM representative, in response to questions from the FAC, clarified some matters relating to the In-Combination report on file including that it was informed by a 'spatial run' carried out on the week of the 14th July 2020 and was uploaded to the record on 15th July 2020. In response to a question put by the FAC regarding the apparent difference in the two DAFM AA screening documents as contained within the two Inspector Certification reports on file, the DAFM representative indicated that the initial screening for AA set out that fifteen European sites were identified within 15 km of the project and that five of these were screened in for AA and that the second AA screening document was completed subsequent to, and reflected the outcome of, a review of the initial screening which was carried out by the DAFM ecologist as set out in the report titled '*Appropriate Assessment Screening Determination for afforestation project CN84735, located at Lakill and Moortown Co Westmeath*'. The DAFM representative also confirmed that the DAFM had considered the submission from An Taisce and was satisfied that the licence issued adequately addressed the matter raised regarding the Area for Biodiversity Enhancement. The DAFM representative was not in a position to definitively answer queries put in relation to the hydrology, drainage and potential surface water movements on the project area as the DAFM had not carried out a field inspection with that as a focus, while indicating that the access lane was evidently wet and mucky, that there were some drains on the site and that it was unlikely that they had running water in them at the time. The DAFM representative was not in a position at the oral hearing to confirm whether the location of the site notices as shown on the Bio Map was sufficient to meet the requirement to be easily visible and legible by persons using the public road.

Consideration by the FAC

The FAC, in the first instance, considered the grounds relating to AA and related matters. The FAC finds that the DAFM undertook a screening for AA of the proposal that identified fifteen European sites within 15 km of the project. Each site is found to be considered in turn and five sites (Lough Bane And Lough Glass SAC 002120, Lough Lene SAC 002121, River Boyne And River Blackwater SAC 002299, Scragh Bog SAC 000692 and White Lough, Ben Loughs And Lough Doo SAC 001810) were screened in (as per the initial screening exercise carried out by the inspector). The FAC finds that the DAFM carried out a review of the

initial screening as set out in the report dated the 14th July 2020 and titled 'Appropriate Assessment Screening Determination for afforestation project CN84735, located at Lakill and Moortown Co Westmeath'. The FAC finds that the outcome of this review was to reverse the screening findings for the five initially screened in sites resulting in all fifteen European sites examined being screened out. The FAC finds that the main rationale relied on in reversing the screening conclusions of the Inspector in relation to the five sites initially screened in was a confirmation from the applicant's forester that the project area was not hydrologically connected to a European sites. In considering the information available to it, including submissions made at the oral hearing, (particularly as it related to the information relied on in screening out the European sites examined and the wider hydrology of the site), the FAC sought additional information from DAFM in relation to the direction of overland flow of water on the project area, an indication of where the project area drains to, and information indicating the presence or otherwise of drains or watercourses on the project area. This request for additional information / clarification included a query in relation to the status of the road at the location of the public notices for the project. The responses received from the DAFM in this connection were circulated to the appellant and the applicant. In the event observations regarding the DAFM clarification were received from the appellant. The FAC finds that the clarification dated 21st June 2021 received from the DAFM includes the following extract;

"Data was collected to map overland flows on 19 June 2021. During the field inspection on 19 June, the following additional information was observed that wasn't clear during my field inspections prior to issue of DAFM decision letter and appeal. This clarity arises from better weather conditions and different inspection times.

1. Plot 1s plant community was quite biodiversity rich and consisted of dry semi-natural grassland with some calcareous species present. Species observed included sort turf sweet vernal grass, crested dogs tail, and bents with abundant white clover, red clover, meadow and creeping buttercup, sheeps sorrel, cats ear. Significant swathes of areas of cats ear, plantain, yarrow with sedges also occurred. Other species included autumn hawkbit, vetches, oxeye daisy, hay rattle, common spotted orchid, knapweed, pignut and fairy flax. The entire plot seemed important for pollinating bumblebees, butterflies which were abundant. Damselflies were common. Greater plant community diversity was evident in the highest field of the plot which was separated by a hedgerow from the lower field. This is to be expected because it contains a ridge and ridge shoulder where soils were thinnest. Skyark was heard calling in the vicinity. A mustelid scat was observed on the corner of stone walls in the adjoining forest plot.

2. Plot 1 commanded clear and important views of the surrounding landscape. The highest field and peak provided views of the Historic village of Fore, its archaeological buildings, Fore's beautiful setting and scenic views of Lough lene and beyond. People were climbing and using the nearby fields to the east recreationally for the view. Plot 1 is visible from the Lough Lene. The peak of the highest field is visible from fore village area. Although private land, all of plot one forms part of the views of people who climb Fore's hills for recreation.

3. If I was to assess the site again knowing what I know now I would either recommend the

refusal of plot 1 in whole or part (the upper field) for landscape reasons and potentially biodiversity reasons, seek more involved and field input from DAFM ecologists or request a subthreshold EIA to assess wider environmental impacts in the round such as landscape and biodiversity and possible hydrological links including karst links to the Lough Lene SAC. My latest observations found landscape sensitive attributes and the potential presence of valued ecological receptors such as potentially valuable semi natural grasslands, skylark, and mustelids in plot 1 and adjoining fields. The site synopsis of lough lene SAC also details that snipe curlew and lapwing use the surrounding lands of the lake, which was mentioned in Notes on IFORIS for DAFM ecologists to review. The upland character of the plot may be important for these declining valued upland birds. No DAFM authored ecological report was supplied with the DAFM AA determination which is an option of DAFM ecology unit; I am not aware of a field inspection by a DAFM ecologist. This additional information may now be pertinent to the FAC assessment."

The FAC considered, that having regard to the ambiguity that exists in relation to the potential hydrological connectivity to a European site (Lough Lene SAC), and the DAFM clarifications dated 21st June 2021, that a serious error was made in the AA Screening process in the screening out of Lough Lene SAC for the purposes of AA having regard to the likelihood, based on information before the FAC now, of a hydrological connectivity between the project area and the said European site. Accordingly, the FAC concluded that a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive is required and should be undertaken regarding this proposal.

In considering the clarification received from DAFM in relation to the status of the road at the location where the public notices were placed, the FAC is satisfied that the DAFM has not erred in the processing of the application in this case as it relates to the public notice placed at the project area for this proposal.

Regarding Environmental Impact Assessment (EIA) and related matters. The EU EIA Directive sets out in Annex II a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. While the project under consideration is for an area that is considerably sub threshold (10.59 ha) for the mandatory submission of an EIA, the FAC finds that the DAFM has carried out a screening to determine the requirement for EIA which records that the project does not have to be subjected to the EIA process. The FAC notes that in carrying out this assessment the DAFM is required to consider cumulative effects as the competent authority for afforestation licences. The FAC finds that there is a discrepancy between the extent of forestry projects considered in the EIA cumulative effects assessment and that included in the In-Combination report carried out for the purposes of screening of the proposal in combination with other plans or projects under Article 6 of the EU Habitats Directive and as alluded to in the DAFM statement to the FAC and the response to the FAC of 21st June 2021. In such circumstances, and where the figures for

forestry projects included in the In-Combination report appear to the FAC to be a more accurate reflection of the extent of cover at the time of the making of the decision on the licence, the FAC considered this to be a serious error in the processing of the licence application as it relates to considerations arising from the EIA Directive and concluded that a new assessment to determine whether an EIA is required should be undertaken regarding this proposal.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions received including at the oral hearing, clarifications received from DAFM in response to the request from the FAC and the observations of the appellant with regard to same. The FAC is satisfied that a serious error or a series of errors was made in making the decision regarding CN84735 and is setting aside and remitting the decision back to the Minister to undertake a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive, to carry out and record a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive and to consider the other matters raised in the DAFM response to the FAC dated 21st June 2021, before a new decision is made.

Yours sincerely,


Seamus Neely On Behalf of the Forestry Appeals Committee